



UNITED STATES PATENT AND TRADEMARK OFFICE

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**OCT 20 2005**

**OFFICE OF PETITIONS**

In re Application of  
Shimp et al.  
Application No. 10/005,238  
Patent No. 6,855,167  
Filed: December 5, 2001  
Attorney Docket No. 525400-208

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: DECISION GRANTING PETITION  
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This decision is in response to patentees' "PETITION TO ADJUST TERM OF PATENT TERM EXTENSION" timely<sup>1</sup> filed on February 28, 2005 requesting that the Office adjust the PTA determination from a period of thirty-six (36) days to a determination of one hundred and twenty days.

Applicants' petition to adjust the PTA determination is GRANTED. The Office will adjust the PAIR determination to reflect a calculation of one hundred and twenty (120) days. The Office will also *sua sponte* issue a certificate of correction to adjust listed on the front of the patent from 36 days to 120 days.

Applicants assert that the Office erred in assessing a eighty-four day reduction for the submission of drawings after the mail date of the notice of allowance. Applicants assert that the reason for the submission was that the drawing was in response to the Office loss of such drawings. Applicants assert that the drawings submitted after notice of allowance was the same set of drawings that were submitted prior to notice of allowance.

Applicants' arguments are persuasive. Specifically, the Office notes that the drawings submitted after the mail date of the notice of allowance were the exact same drawings submitted prior to the notice of allowance and accordingly are not considered a failure to engage in reasonable efforts to conclude prosecution of the application under 37 CFR 1.704(c)(10). The Office had assessed the eighty-four (84) day reduction based on the period beginning on the date of the submission of such drawings (November 24, 2004) and ending on the date of issuance of the patent on February 15, 2005.

The Office had an administrative delay of 127 for failing to initially act upon the application within 14 months of the filing date. Applicants had failed to engage in reasonable efforts to conclude prosecution of the application for a period of seven days by failing to reply within three months as required under 37 CFR 1.704(b). Accordingly, the overall determination of PTA at the time of the issuance of the patent is 120 (127-7=120) days.

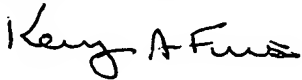
After the mailing of this Office action, the patented file will be forwarded to the certificate of corrections branch for the issuance of the certificate of correction.

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<sup>1</sup>Patent issued on 2/15/2005.

The Office acknowledges receipt of the \$200.00 fee for the submission of the petition to adjust the patent term.

Any questions related to this decision should be directed to Kery Fries at 571-272-7757.

A handwritten signature in black ink, appearing to read "Kery A. Fries".

Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

cc: ADJUSTED PAIR CALCULATION  
DRAFT CERTIFICATE OF CORRECTION